IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2271 OF 2000

Amulakhrai D. Desai,
aged 58 years, retired,
Indian Inhabitant of Bombay,
residing at 203, Govardhan 'B'
Building, Lokmanya Tilak Road,
Borivli(West), Mumbai 400 092. Petitioner

vs.

1. The Municipal Corporation of Brihan Mumbai, a Corporation constituted under the Bombay Municipal Corporation Act, 1888 having its Head Office at Municipal Building 1st Floor, Mahapalika Marg, Fort, Mumbai 400 001.

2. The Municipal Commissioner of the Municipal Corporation of Brihan Mumbai, having his office at Municipal Building, 1st floor, Mahapalika Marg, Fort, Mumbai 400 001. Respondents

Mr.S.P.Ghaste for the petitioner.

Mrs.A.K.Savla for the respondents.

CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 4th October, 2006

ORAL JUDGMENT (Per F.I.Rebello,J.).

The case of the petitioner is that he carried out the measurements pursuant to his appointment as a neutral person in terms of the order of this Court dated 27.1.1998 in Writ Petition No.2094/97 along with Notice of motion No.6/199 in Writ Petition No.1636/97. It was

submitted that the show cause notice dated 28.4.2000 is based on an assumption that he had done measurements of works which he was not asked to do. It has been set out that the measurements of the 5 works done apart from the 86 works was in terms of the order of this Court. Once that is the case, it is submitted that no enquiry ought to have been held against the petitioner and the show cause notice requires to be quashed and set aside.

. We may address ourselves to this issue as apart from this there are several other allegations which we do not propose to go into at this stage. Vasant Nagoji Gaikwad, Joint Chief Personnel Officer has filed his affidavit dated 21.11.2002. In that affidavit in paragraph 3(c) and 3(d), the measurements done by the petitioner in respect of some additional works have been explained. Reference is made to works amounting to Rs.41 lacs approximately based on 7 memos issued to the petty works Contractors by the Engineer of 'E' Ward, who is the petitioner in Writ Petition No.2094/97 namely M/s.M.H.Corporation. In paragraph (d) it is set out that the 7 memos have been proved to be bogus, back dated and issued by the chargesheeted Engineers who have been suspended and against whom chargesheets have been issued. The discrepancies in the memos have been pointed out and that the originals were neither produced by the petty works contractors nor office copy was

produced by the concerned Engineers. It is also pointed out that enquiry was conducted against the four Engineers who were guilty for issuing bogus memos and tentative orders were passed by the Municipal Commissioner to dismiss them, as on the date of the affidavit. These works are the very works which the petitioner is presumed to have measured.

2. Considering these aspects and the nature of the allegations, we do not think that the enquiry against the petitioner and/or the show cause notice to him ought to be stayed. Considering the gravity of the charges and since it pertains to the public revenue, the interim order granted by this Court on 21.1.2002 is vacated. The charges being of serious nature, it is open to the Corporation to proceed in respect of the charges according to law. Needless to say that the enquiry will be conducted in terms of the rules of the respondent-Corporation. By the interim order other terminal dues were released in favour of the petitioner except pension. The petitioner now claims that he should be entitled to provisional pension. We make it clear that the enquiry was stayed pursuant to the petitioner moving by way of this petition and the matter has been pending in this Court for the last six years and petitioner cannot take advantage of that and claim provisional pension more so considering the gravity of

the misconduct. Considering the gravity of charges, we are, therefore, not inclined to grant any relief in respect of pension. Rule discharged. There shall be no order as to costs.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)